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TO RUEHC/SECSTATE WASHDC 0691
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SUBJECT: TELSTRA OUT OF BROADBAND BIDDING

¶1. (SBU) Summary. The GOA confirmed December 15 that Telstra has been excluded from the National Broadband Network bidding process because its bid failed to conform to bid guidelines on SMEs. Telstra's chairman criticized the decision over a "trivial" point. Minister Conroy was caught in a difficult position; other bidders would have brought legal action if Telstra's non-compliant bid had been allowed to stand. Some expect Telstra to lawyer-up, quickly. End summary.

¶2. (U) Communications Minister Stephen Conroy at the Department of Broadband, Communications, and the Digital Economy (DBCDE) confirmed December 15 that telecom giant and former monopolist Telstra had been excluded from bidding on the National Broadband Network (NBN). Conroy noted that an expert panel (which included DBCDE lawyers, private lawyers, and the Solicitor General) that is reviewing bids determined that Telstra's short (12-page) submission was not compliant. The Telstra bid failed to include a plan on how it would involve small and medium enterprises in building the NBN, which was a non-negotiable point in the bid tender announced earlier this year.

¶3. (SBU) Telstra chair Donald MacGauchie attacked the decision, calling the SME issue "trivial" and saying the DBCDE decision was "legally questionable." He restated Telstra's usual talking point that it was the only bidder with the financial and technical capacity to build the NBN. CEO Sol Trujillo was uncharacteristically a bit more cautious, saying he still thought the GOA could choose Telstra, and adding Telstra would do all it could to protect its interests.

¶4. (SBU) Observers are confounded about Telstra's failure. Telstra claimed it submitted an SME plan earlier in December - but still well after the November 26 deadline. Telstra's failure put Conroy in a tough spot; excluding Telstra from the bidding process would be sure to generate a firestorm of controversy and the threat of legal action by Telstra. But to go against legal advice and allow Telstra's late SME plan would have probably provoked legal challenges from the other main bidders - the Terria consortium headed by Optus (Singtel's local subsidiary), the Acacia consortium based in Melbourne, and Canadian telco Axia.

¶5. (SBU) One industry insider pointed out that Telstra's initial short bid was already in compliance for failing to guarantee it would cover 98% of Australian premises; Telstra itself has publicly said it planned to cover 80-90% of the Australian population. The insider said Telstra's decision to submit the SME plan late was a deliberate decision designed to force DBCDE into a corner. DBCDE would either have to make a mockery of the November 26 deadline to accept Telstra's SME plan, or "tell Telstra, tough." Either way, DBCDE would face legal challenges. The insider said that even up to November 26, despite contentious relations between

Conroy and Telstra, there were people in Conroy's office who wanted to give the NBN to Telstra as the easiest choice. But Telstra's bare-bones, no-details-attached bid may have cost it even that grudging support in Conroy's office.

16. (SBU) Comment: The confused NBN landscape is now even more scrambled. It is difficult to see how Conroy could walk back from this clear statement that Telstra has been excluded from the NBN bidding. Although true that to have accepted the late bid would have provoked legal challenges, we expect Telstra, never shy about challenging the government. We expect Telstra, never shy about challenging the government of the day, will "lawyer up" itself. That said, there are ways Telstra could still play in the broadband game short of entering its own bid. Canada's Axia, although a late entry, could do with Telstra as an industry expert says it did in the Singapore broadband case, and bring the incumbent on to its team by offering generous terms for access to its existing network. Telstra could also expand its existing copper wire network as the basis to compete with the NBN across the country, but both Optus and Acacia in their proposals have said the GOA should prevent Telstra from bidding a rival network. If this decision stands, and an NBN without Telstra is built, it could be a watershed moment in Australia's telecommunications history. End comment.

MCCALLUM